

# EXHIBIT B

**EXHIBIT 2**

**Goodmans LLP "Steps" Memorandum  
dated June 11, 2007**

# Goodmans<sup>LLP</sup>

Memorandum

**TO:** Distribution List

June 11, 2007

**FROM:** Goodmans LLP

**FILE NO:** 07-1626

**SUBJECT:** Proposed Investment in SkyPower Corp.

The following memorandum describes, in general terms, the transaction steps pursuant to which Lehman Brothers Inc. ("Lehman"), indirectly through LB SkyPower Inc. (the "Purchaser"), will indirectly acquire a 50% interest in SkyPower Corp. ("SkyPower"). The proposed structure, and this memorandum, will be refined as the transaction proceeds. This memorandum has been revised to reflect recently proposed changes to the structure of the management incentive plan.

## **FACTS**

The relevant facts, as we understand them, are as follows:

- The Purchaser is a corporation incorporated pursuant to the laws of Delaware and is a resident of the U.S. for purposes of the *Canada-United States Tax Convention* (the "Treaty").
- SkyPower is a corporation incorporated pursuant to the laws of Canada and is a "Canadian controlled private corporation" for purposes of the *Income Tax Act* (Canada) (the "Tax Act").
- The issued and outstanding shares and options of SkyPower are as set out in Schedule "A".

## **PROPOSED STRUCTURE**

The following is a general description of the transaction steps to be undertaken in connection with the completion of the Transaction. Where paragraph numbers have changed, previous paragraph numbers are shown at the end of the paragraph. All dollar amounts herein are expressed in U.S. dollars.

### *Pre-Closing Transactions*

1. The current shareholders of SkyPower will incorporate a new corporation, 6785671 Canada Inc. ("Newco"), pursuant to the laws of Canada. It is our understanding that the shareholdings of Newco will be identical to the current shareholdings of SkyPower calculated on a fully diluted basis. Newco will be capitalized with cash equal to the book value of the Non-Core Assets (as defined below) from the proceeds of the transactions set out below.

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2. A new corporation, 6785778 Canada Inc. ("Shareholder Holdco") will be incorporated pursuant to the federal laws of Canada. Shareholder Holdco will be controlled at all times by Kerry Adler ("Adler").<sup>1</sup>
3. Shareholder Holdco will incorporate a new company, 1328392 Alberta ULC ("Acquisitionco"), as an unlimited liability company pursuant to the laws of Alberta. Shareholder Holdco will subscribe for one common share of Acquisitionco. Adler will be the initial director of Acquisitionco.
4. The authorized share capital of Acquisitionco is intended to consist of Class A, Class B and Class C common shares<sup>2</sup>, a class of non-voting convertible Class D common shares (the "Convertible Shares") and preferred shares. On the occurrence of certain events, the Convertible Shares will be convertible into that number of common shares of SkyPower such that the holders thereof are entitled to receive 20% of the amount, if any, by which the proceeds of such event exceed an 8% return on the invested capital of the common shareholders (including the return to such shareholders of their invested capital).
5. Adler will incorporate two new corporations, 2138746 Ontario Inc. ("Adler Holdco No.1") and 2138747 Ontario Inc. ("Adler Holdco No.2") pursuant to the laws of Ontario.
6. Adler will transfer 1,339,821.5 common shares of SkyPower to Adler Holdco No.1 in consideration for shares of Adler Holdco No.1 on a tax-deferred basis pursuant to subsection 85(1) of the Tax Act. Adler will transfer his remaining shares of SkyPower (1,348,028.5 common shares) to Adler Holdco No.2 in consideration for shares of Adler Holdco No.2 on a tax-deferred basis pursuant to subsection 85(1) of the Tax Act. These transfers will take place on day prior to Closing
7. The following additional transactions will take place prior to the entering into of a stock purchase agreement providing for the Closing transactions set out below.
  - (a) One day prior to Closing, each current shareholder of SkyPower (other than Adler Holdco and HSH Nordbank) will transfer 50% of its shares of SkyPower to Shareholder Holdco in consideration for common shares of Shareholder Holdco. Transferring shareholders may elect to effect the transfer on a fully or partially tax-

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<sup>1</sup> Bennett Jones to advise as to how this is to be effected (e.g., issuance of voting shares to Adler, voting trust arrangement, etc.).

<sup>2</sup> In general, the Class A, Class B and Class C common shares of Acquisitionco will be economically equivalent and will participate *pari passu* with one another. However, each Class A share will be entitled to 1.01 votes per share (as compared to one vote per share for each Class B and Class C common shares). As a result, immediately following Closing, Lehman will own shares representing more than 50% of the votes of Acquisitionco.

deferred basis pursuant to subsection 85(1) of the Act.<sup>3</sup> Non-resident transferors will be required to deliver section 116 clearance certificates to Shareholder Holdco in respect of this disposition of SkyPower shares.<sup>4</sup>

- (b) One day prior to Closing, each SkyPower optionholder will elect to receive a cash payment equal to the “in-the-money” amount of 50% of his/her options. Adler will elect to receive a cash payment in respect of 100% of his options. This payment will be satisfied by the issuance by SkyPower to each optionholder of a demand promissory note (collectively, the “Option Notes”), with a principal amount equal to the payment owing (net of any applicable withholding or deductions). [14]
- (c) Shareholder Holdco will transfer the one common share of Acquisitionco to the Purchaser.
- (d) Thomas Bernard, John Veech and Romita Shetty will be appointed to the board of directors of Acquisitionco.
- (e) The outstanding common share of Acquisitionco will be repurchased for cancellation and the articles of the company will be amended to create the authorized share capital described in paragraph 4 above.

*Closing Transactions*

- 8. Lehman will subscribe for Class A common shares of Acquisitionco in consideration for cash of approximately \$87,500,000 million. [8]
- 9. Acquisitionco will grant to Lehman rights (the “Rights”) to acquire additional Class A common shares of Acquisitionco at the current per share valuation. [9]
- 10. Acquisitionco will advance \$47,369,639 to SkyPower (the “Advance”).<sup>5</sup> [10]
- 11. SkyPower will use a portion of the funds received from Acquisitionco to redeem 100% of the SkyPower shares held by Adler Holdco No. 1. [11]

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<sup>3</sup> It is expected that shareholders will participate in a subsequent liquidity event by selling their shares of Shareholder Holdco. Accordingly, the scope of activities permitted in the Shareholder Holdco will be limited to the holding of the shares of Acquisitionco.

<sup>4</sup> This transfer must occur prior to the date on which Acquisitionco acquires control of SkyPower, otherwise the SkyPower shares may not qualify for the lifetime capital gains exemption.

<sup>5</sup> The amount advanced by Acquisitionco to SkyPower will be equal to the sum of the cash proceeds to be paid to Adler Holdco on the redemption of the SkyPower shares held by Adler Holdco, the cash payment owing in respect of the SkyPower options and certain funding for a bonus pool.

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12. SkyPower will repay the Option Notes.
13. The following transactions will take place simultaneously:<sup>6</sup>
  - (a) Shareholder Holdco will transfer its shares of SkyPower to Acquisitionco in consideration for Class B common shares of Acquisitionco. Shareholder Holdco and Acquisitionco will jointly elect for this transfer to take place on a tax-deferred basis pursuant to subsection 85(1) of the Tax Act.
  - (b) Each of the current shareholders of SkyPower (other than Adler Holdco No.2 and HSH Nordbank) will transfer its remaining shares of SkyPower (equal to 50% of its current holdings) to Acquisitionco in consideration for cash.
  - (c) Adler Holdco No.2 will transfer its remaining shares of SkyPower to Acquisitionco in consideration for Class B common shares of Acquisitionco. Adler Holdco No. 2 and Acquisitionco will jointly elect for this transfer to take place on a tax-deferred basis pursuant to subsection 85(1) of the Act.<sup>7</sup> [15]
14. It is our understanding that HSH Nordbank has previously exercised all of its outstanding warrants to acquire Class B common shares of SkyPower. [16]
15. HSH Nordbank will transfer its Class B common shares of SkyPower to Acquisitionco in consideration for cash (as to 50%) and Class C common shares of Acquisitionco (as to 50%). HSH Nordbank will be required to deliver to Acquisitionco a section 116 clearance certificate in respect of this disposition of SkyPower shares. Acquisitionco will add to the paid-up capital of its Class C common shares an amount equal to the fair market value of one-half of the Class B common shares of SkyPower acquired by it from HSH Nordbank. [17]
16. Acquisitionco will contribute \$47,369,639 to SkyPower in consideration for common shares of SkyPower. [12]
17. SkyPower will use the proceeds received from Acquisitionco pursuant to step 16 to repay the Advance. [13]

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<sup>6</sup> Any shareholders of SkyPower that are not resident in Canada for purposes of the Tax Act will be required to deliver to Acquisitionco a section 116 clearance certificate in respect of the disposition of the shares of SkyPower. If a non-resident shareholder fails to deliver a clearance certificate, Acquisitionco will be entitled to withhold, and obligated to remit to the Canadian tax authorities, 25% of the gross purchase price payable to such shareholder.

<sup>7</sup> As a result of these transactions (together with the issuance of SkyPower shares to Acquisitionco pursuant to step 16), Acquisitionco will acquire control of SkyPower for tax purposes. SkyPower will file an election under subsection 256(9) of the Tax Act such that the acquisition of control will be considered to take place at the time these transactions take place (otherwise would be deemed to take place at the commencement of the day).



18. Following the preceding transaction, each SkyPower optionholder will dispose of his/her remaining options for cancellation in consideration for options to acquire Class B common shares of Acquisitionco on similar terms to the existing SkyPower options.<sup>8</sup> [18]

*Post-Closing Transactions*

19. Following the above transactions, Acquisitionco will own all of the issued and outstanding shares of SkyPower. The following transaction steps will then be undertaken at the earliest possible time following consent of Lehman to proceed:

- (a) Acquisitionco will incorporate a new corporation ("GPCo") pursuant to the laws of Canada;
- (b) Acquisitionco and GPCo will form a new limited partnership (the "LP") pursuant to the laws of a Canadian province. GPCo will be the general partner of LP and entitled to a 0.01% interest. Acquisitionco will be the sole limited partner of LP and entitled to a 99.99% interest;
- (c) Acquisitionco will transfer all of the shares of SkyPower to LP on a tax-deferred basis pursuant to subsection 97(2) of the Tax Act; and
- (d) each of SkyPower and its principal wholly-owned corporate subsidiaries will continue to Alberta and convert to unlimited liability companies, provided that the conversion of SkyPower to an unlimited liability company will take place at least one day following the date of which the shares of SkyPower are transferred to the LP.<sup>9</sup>

20. Immediately post-Closing, SkyPower will transfer certain non-core assets (the "Non-Core Assets") to Newco in consideration for cash equal to the book value thereof. It is our understanding that the book value of the Non-Core Assets is nominal (i.e., approximately \$14,483).<sup>10</sup>

21. Future equity contributions by Lehman will be made in consideration for additional Class A common shares of Acquisitionco pursuant to the Rights.

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<sup>8</sup> This step must take place following the acquisition of control of SkyPower by Acquisitionco.

<sup>9</sup> Lehman to confirm that it is comfortable with the conversion of SkyPower not taking place until after Closing of the acquisition (this is partially dependent upon an analysis of the current activities of SkyPower).

<sup>10</sup> The term sheet notes that certain of the assets of SkyPower, consisting of passive investments in unrelated business activities, will be excluded from the Transaction.

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## *Management Incentive Plan*

22. Acquisitionco will establish a management incentive plan (the "MIP") for directors, officers and employees of Acquisitionco, SkyPower or any related entities. The MIP will be structured as a stock option plan to acquire Convertible Shares of Acquisitionco (see paragraph 4 for a description of the terms of the Convertible Shares). Under the MIP, options may be granted to acquire up to 100,000 Convertible Shares (the "Option Pool").
23. Immediately following Closing, participants in the MIP will be granted options to acquire Convertible Shares for nominal consideration.<sup>11</sup> The options will be subject to appropriate vesting schedules and conditions.
24. To the extent options are not issued on Closing in respect of the entire Option Pool, additional options (the "Additional Options") will be granted to Adler to acquire the remaining Option Pool for nominal consideration. The Additional Options will not vest until a Monetization Event (as defined above) and will terminate if options are subsequently issued to other participants in the MIP in respect to the underlying Convertible Shares (i.e., the options will terminate as the remainder of the Option Pool is allocated pursuant to paragraph 26 below).
25. Pursuant to the terms of the MIP, instead of exercising their options, participants may elect to receive a cash payment equal to the "in-the-money" amount of their vested options. If a participant elects to receive a cash payment, Acquisitionco may elect to satisfy its payment obligation by delivering Convertible Shares with a fair market value equal to the cash payment owing.
26. Current and future employees may be granted additional options from time to time. Future options grants will be made with a strike price equal to the fair market value of the underlying Convertible Shares at the time of grant.

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<sup>11</sup> Deloittes will provide an opinion that the exercise price pursuant to the options is equal to or greater than the fair market value of the Convertible Shares at the time the options are issued.